

DATES: Comments from all interested parties must be received by June 12, 1990. Public hearing requests must be received by May 29, 1990.

ADDRESSES: Comments and materials concerning this proposal should be sent to the Field Supervisor, U.S. Fish and Wildlife Service, Ecological Services Field Office, c/o Corpus Christi State University, Campus Box 338, 6300 Ocean Drive, Corpus Christi, Texas 78412. Comment's and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Phillip Clayton, at the above address (512/888-3346 or FTS 529-3346).

SUPPLEMENTARY INFORMATION:

Background

Cryptantha crassipes is a narrow endemic that occurs in Brewster County, Texas. The species grows on xeric, gypsiferous, chalky shales on low, rounded hills and gentle slopes in the Trans-Pecos shrub savannah. The climate is arid, with late summer rains. The plants grow in full sunlight and receive additional heat from the soil substrate (Poole 1987). The plants occur between 3,150 and 3,320 feet in elevation. Although *C. crassipes* might be considered a colonizer, it is probably more correctly thought of as a component of an edaphic climax community (Poole 1987). Associated species include *Eriogonum havardii* (Havard buckwheat), *Euphorbia perennans* (perennial spurge), *Acacia schottii* (Schott acacia), *Anulocaulis leiosolenus* (gypsum ringstem), *Ephedra* sp. (Mormon tea), *Larrea tridentata* (creosote), *Chrysactinia mexicana* (damianita), *Dalea formosa* (feather dalea), *Krameria glandulosa* (range ratany), and *Tiquilia hispidissima* (no common name).

Cryptantha crassipes is a perennial that grows to two feet tall, silvery overall, with a dense mound of leaves at the plant's base. The stems are slender, erect, hairy, and bristly. Leaves are narrow and whitish with hairs and bristles; at the plant's base, they are up to 3 inches long and to 1/4 inch wide. There are several stem leaves that become narrow at the apex. The flower cluster is terminal and 1 inch in diameter. The flowers are white, with yellow knobs rising above the laid-back white petals. The hairy fruit consists of four egg-shaped nutlets. Flowering occurs from later March-early June, and fruiting occurs from April-July (Poole 1987).

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018-AB38

Endangered and Threatened Wildlife and Plants; Proposed Rule To List the Plant *Cryptantha crassipes* (Terlingua Creek Cat's Eye) as Endangered

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Fish and Wildlife Service (Service) proposes to list *Cryptantha crassipes* (Terlingua Creek cat's eye), as an endangered species under the authority of the Endangered Species Act of 1973 (Act), as amended. This plant is known from six sites in Brewster County, Texas. The 6 populations consist of less than 3,800 plants. The plants are impacted by road construction, cattle trampling, and off-road vehicle (ORV) use. This proposal, if made final, would implement Federal protection provided by the Act for Terlingua Creek cat's eye. The Service seeks data and comments from the public on this proposal.

Six populations are presently known, all on private land in Brewster County, Texas. All populations appeared to be healthy and vigorous in 1987 (Poole 1987). At least one population was documented in 1939. The six known populations consist of less than one hundred to a few thousand plants scattered over sites of up to 175 acres in size. Among these populations, there is a total of about 3,754 individuals. All individuals observed have been mature. No seedlings or juveniles have been seen. Although the presence of immature fruits and/or flowers was documented in the 1987 status report, no seed dispersal was observed. The population biology of the species is unknown (Poole 1987).

Cryptantha crassipes was first discovered by V.L. Cory in the late 1930's in Brewster County, Texas. I.M. Johnston described the species in 1939. The species has been collected infrequently. No other historical occurrences are known (Poole 1987).

Federal Government actions on this species began with section 12 of the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*), which directed the Secretary of the Smithsonian Institution to prepare a report on those plants considered to be endangered, threatened, or extinct. This report, designated as House document No. 94-51, was presented to Congress on January 9, 1975. On July 1, 1975, the Service published a notice (40 FR 27823) that formally accepted the Smithsonian report as a petition within the context of section 4(c)(2), now section 4(b)(3)(A), of the Act and of its intention thereby to review the status of those plants. *Cryptantha crassipes* was included as "threatened" in the July 1, 1975, petition.

On December 15, 1980, the Service published a revised Notice of Review for Native Plants in the Federal Register (45 FR 82480); *Cryptantha crassipes* was included in that notice as a Category 2 species, which means that information indicates that proposing to list the species as endangered or threatened is possibly appropriate, but for which conclusive data on biological vulnerability and threat are not currently available to support a proposed rule. The 1985 (50 FR 39526) plant notice of review maintained *Cryptantha crassipes* in Category 2. The 1990 plan notice of review (55 FR 6197) lists it in Category 1. The Service is proceeding with a listing proposal on the basis of information in Poole's (1987) status report.

Summary of Factors Affecting the Species

Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Cryptantha crassipes* I.M. Johnston (Terlingua Creek cat's-eye) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* A private resort has been selling small tracts in Brewster County, including areas that contain populations of *Cryptantha crassipes*. More than 90 percent of the lots in the resort are sold. If any of the numerous landowners decide to develop their property, some of the sites or some of the plants could be destroyed. The numerous roads constructed by the resort probably destroyed some individual plants, as the roads cut through several of the population sites. Additional road construction or maintenance could possibly eliminate more plants in the area.

Terlingua Creek cat's-eye is not known to be palatable to livestock even though grazing occurs in the area. Livestock may have a negative impact on this species through trampling and surface disturbance.

The barren landscapes that support *Cryptantha crassipes* are potential abuse areas for off-road vehicles (ORV). Several hills around the closest town are already crisscrossed with ruts. A few sites of *Cryptantha crassipes* already have one or two sets of tracks. Off-road vehicles destroy plants, create surface disturbances, and increase habitat erosion, all of which are detrimental to seedling establishment and growth.

Clay (bentonite) mining occurs north of the Terlingua Creek cat's-eye sites. It is unknown whether these sites have economic value for mining or contain bentonite.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* None known. Because of its rarity, *Cryptantha crassipes* is of interest to botanists and other rare plant enthusiasts. Therefore, collection of the plant is a minor but present threat.

C. *Disease or predation.* None has been observed.

D. *The inadequacy of existing regulatory mechanisms.* There are no existing Federal or State laws that

protect *C. crassipes*. The Act would provide protection and encourage active management through the "Available Conservation Measures" discussed below.

E. *Other natural or manmade factors affecting its continued existence.* *Cryptantha crassipes* is a narrow endemic that is substrate specific. The recent status survey (Poole 1987) documented only mature plants. No seedlings or seeds were observed. With no new plants being established in the populations, any threats that destroy existing plants could lead to extinction of the species.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to propose this rule. Based on this evaluation, the preferred action is to list *Cryptantha crassipes* as endangered. With only six populations known, the species warrants protection under the Act. *C. crassipes* is vulnerable to damage from road construction, development, livestock trampling, and ORV use. The plant is not protected by Federal or State law. Critical habitat is not being proposed for the reasons discussed below.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that, to the maximum extent prudent and determinable, the Secretary proposes critical habitat at the time the species is proposed to be endangered or threatened. The Service finds that designation of critical habitat is not presently prudent for this species. No direct attention should be drawn toward the species or its location. Any type of publicity on this species could make it susceptible to increased visitation or collection, which would be detrimental to the survival of this rare endemic. As discussed under Factor B in the Summary of Factors Affecting the Species, *Cryptantha crassipes* is threatened by taking, an activity difficult to enforce against and only regulated by the Act with respect to plants in cases of (1) removal and reduction to possession of listed plants from lands under Federal jurisdiction, or their malicious damage or destruction on such lands; and (2) removal, cutting, digging up, or damaging or destroying in knowing violation of any State law or regulation, including State criminal trespass law. Such provisions are difficult to enforce, and publication of critical habitat descriptions and maps would make *Cryptantha crassipes* more vulnerable and increase enforcement

problems. It has not been possible to contact the many owners of the *C. crassipes* sites. Land ownership in this part of Texas is complex owing to the sale of numerous small tracts to mostly out-of-state buyers. Protection of this species' habitat will be addressed through the recovery process and through the section 7 jeopardy standard. Therefore, it would not now be prudent to determine critical habitat for *Cryptantha crassipes*.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. The protection required of Federal agencies and the prohibitions against certain activities involving listed plants are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

The Act and its implementing regulations found at 50 CFR 17.61, 17.62, and 17.63 set forth a series of general trade prohibitions and exceptions that apply to all endangered plants. All trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61, apply.

These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, sell or offer for sale this species in interstate or foreign commerce, or to remove and reduce to possession the species from areas under Federal jurisdiction. In addition, for listed plants, the 1988 amendments (Pub. L. 100-478) to the Act prohibit the malicious damage or destruction on Federal lands and the removal, cutting, digging up, or damaging or destroying of listed plants in knowing violation of any State law or regulation, including State criminal trespass law. Certain exceptions apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered species under certain circumstances.

It is anticipated that few trade permits would ever be sought or issued because the species is not common in cultivation or in the wild. Requests for copies of the regulations on plants and inquiries regarding them may be addressed to the Office of Management Authority, U.S. Fish and Wildlife Service, P.O. Box 3507, Arlington, VA 22201 (703/358-2104).

Public Comments Solicited

The Service intends that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule are hereby solicited. Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to this species;

(2) The location of any additional populations of this species and the reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act;

(3) Additional information concerning the range, distribution, and population size of this species; and

(4) Current or planned activities in the subject area and their possible impacts on this species.

Final promulgation of the regulation on this species will take into consideration the comments and any additional information received by the

Service, and such communications may lead to a final regulation that differs from this proposal.

The Endangered Species Act provides for a public hearing on this proposal, if requested. Requests must be received within 45 days of the date of publication of the proposal. Such requests must be made in writing and addressed to the Field Supervisor, Corpus Christi Ecological Services Field Office (see ADDRESSES).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the *Federal Register* on October 25, 1983 (48 FR 49244).

References Cited

Poole, J.M. 1987. Status report on *Cryptantha crassipes*. U.S. Fish and Wildlife Service. Albuquerque, NM. 20 pp. + maps.

Author

The primary author of this proposed rule is Sonja Jahrsdoerfer, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, New Mexico 87103 (505/766-3972 or FTS 474-3972).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Fish, Marine mammals, Plants (agriculture).

Proposed Regulation Promulgation

Accordingly, it is hereby proposed to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361-1407; 16 U.S.C. 1531-1543; 16 U.S.C. 4201-4245; Pub. L. 99-625, 100 Stat. 3500; unless otherwise noted.

2. It is proposed to amend § 17.12(h) by adding the following, in alphabetical order under the family Boraginaceae, to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific Name	Common Name					
Boraginaceae—Borage family:						
<i>Cryptantha crassipes</i>	Terlingua Creek cat's-eye	U.S.A. (TX)	E		NA	NA

Dated: February 28, 1990.

Richard N. Smith,

Acting Director, Fish and Wildlife Service

[FR Doc. 90-8577 Filed 4-12-90; 8:45 am]

BILLING CODE 4310-55-M